

The Appeals Board adopts the stipulations of the parties as set forth in the Award of the Special Administrative Law Judge.

ISSUES

Claimant alleged that she sustained a work-related accident during the period of January 1991 through September 1992. The Special Administrative Law Judge found that claimant had provided timely notice of her accident and was entitled to permanent partial general disability benefits based upon a twenty percent (20%) loss of impairment of function. The respondent requests the Appeals Board review the findings of the Special Administrative Law Judge. The issues now before the Appeals Board are:

- (1) Whether claimant sustained an accidental injury arising out of and in the course of her employment with the respondent during the period of January 1991 through September 1992.
- (2) Whether notice was properly given and written claim was timely filed.
- (3) Whether claimant is entitled to temporary total disability benefits for the period of January 4, 1991 through March 11, 1991.
- (4) Nature and extent of disability.
- (5) Whether claimant is entitled to authorized or future medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds, as follows:

- (1) Claimant sustained personal injury by accident arising out of and in the course of her employment with respondent up through and including January 1991. Claimant failed to file written claim for benefits until September 1992, and, thus, is barred from receiving benefits in this proceeding.

Claimant is sixty (60) years old, has completed the seventh (7th) grade, and has worked for respondent since 1975. Claimant has a long history of problems with her hands and arms and reports that she had bilateral carpal tunnel surgery in the early 1970's and later experienced increased symptomatology in the late 1980's. In this proceeding, claimant alleges that she experienced additional injury to her hands and arms during the period January 1991 through September 1992 while working for respondent and repetitively using her hands and arms to inspect small parts.

Despite ongoing symptomatology, claimant continued to work for respondent until January 4, 1991 when she consulted with Dr. Neonilo Tejano of Halstead, Kansas, who took her off work for surgery to both hands. Dr. Tejano returned claimant to work on March 11, 1991. Claimant testified that since her return to work, her hands and elbows are worse and she experiences increased numbness. According to claimant, Dr. Tejano's surgery helped temporarily, but since returning to work and increasing her activity level, they have become more symptomatic.

As written claim for benefits was made in September 1992, a crucial issue in this proceeding is the determination of the date of accident. In order for this claim to be compensable, the evidence must establish that claimant sustained additional injury after her return to work for respondent in March 1991. The evidence presented fails to convince the Appeals Board that it is more probably true than not that this occurred. At her counsel's request, claimant saw Ernest R. Schlachter, M.D., for examination and evaluation on February 11, 1993. Dr. Schlachter's report generated as a result of that consultation indicates that claimant's condition did not worsen after her return to work in March after her surgeries. We note that Dr. Schlachter reports that claimant returned to work in March 1992 after her carpal tunnel releases in January and February of that year. However, claimant testified at both the preliminary and regular hearings that Dr. Tejano operated on her in 1991.

Claimant's testimony establishes that her symptoms have increased somewhat since her return to work. However, the evidence fails to establish whether the claimant has sustained additional injury or whether the symptomatology is part and parcel of the injury sustained immediately prior to her surgeries in 1991. The evidence introduced by claimant pertaining to the nature and extent of symptomatology experienced after her return to work in March 1991 is contradictory and fails to satisfy claimant's burden of proof.

(2) No proceedings for compensation shall be maintained under the Workers Compensation Act unless a written claim for benefits is served upon the respondent within two-hundred (200) days after the date of the accident or date that last benefits were provided. See K.S.A. 44-520a(a). The two-hundred (200) day claim is extended to one (1) year when the employer, having notice of the accident, fails to file with the Director the accident report required by statute. See K.S.A. 44-557.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether claimant has satisfied this burden of proof, the trier of fact shall consider the whole record. See K.S.A. 44-501(a). 'Burden of proof' means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not. See K.S.A. 44-508(g).

As the evidence presented fails to establish that claimant sustained a work-related injury or received treatment for same within one (1) year preceding the date of filing of written claim in September 1992, the claim against respondent may not be maintained.

AWARD

WHEREFORE, it is by the Appeals Board, ordered, adjudged, and decreed that the Award dated February 7, 1994, and Nunc Pro Tunc Award dated February 9, 1994, of Special Administrative Law Judge William F. Morrissey are hereby modified in the respect that claimant is denied workers compensation benefits in this proceeding. The remaining orders of the Special Administrative Law Judge as contained in the aforementioned awards pertaining to the payment of fees to the court reporting services and the Special Administrative Law Judge are affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, 1861 N. Rock Road, Suite 320, Wichita, KS 67206
David S. Wooding, 220 W. Douglas, Suite 300, Wichita, KS 67202
Steven L. Foulston, PO Box 48128, Wichita, KS 67201-8128
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director